

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

AIRGAS DRY ICE

Employer-Petitioner

and

Case 21-UC-418

TEAMSTERS UNION LOCAL NO. 578

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, and the matter having been duly investigated and considered, pursuant to the delegation of the Board under Section 3(b) of the Act, I find that clarification of the bargaining unit is not warranted at this time.

The Employer contends that its five working foremen are supervisors as defined in Section 2(11) of the Act and, therefore, seeks to exclude working foremen from the collective-bargaining unit, which also includes all truck drivers, warehousemen, inside servicemen, and outside servicemen. The Union contends that working foremen have no supervisory authority and have been included in the collective-bargaining unit for more than 30 years, a fact not disputed by the Employer. The instant petition was filed during the term of the current collective-bargaining agreement, which is effective July 1, 2002 through

June 30, 2007. The investigation revealed that during contract negotiations in 2002, the Employer proposed removing working foreman from the unit, which the Union refused. As a result, the working foreman remained in the unit, as described at Article I and later referenced in the contract.

The Board has held that a unit clarification petition submitted during the term of a contract specifically dealing with the disputed classification will be dismissed if the party filing the petition did not reserve its right to file during the course of bargaining. Edison Sault Electric Co., 313 NLRB 753 (1994), citing Wallace-Murray Corp., 192 NLRB 1090 (1971). The Board has also held that a timely unit clarification petition may be filed after a contract's execution if the petitioning party reserved its right, during the course of bargaining, to file for clarification after a contract's execution. Arthur Logan Memorial Hospital, 231 NLRB 778 (1977); Edison Sault Electric Co., supra at 754, fn. 2. The Board has also entertained unit clarification petitions when they are filed shortly before the agreement's expiration, as the parties are preparing for negotiations. University of Dubuque, 289 NLRB 349, 350 (1988).

In the present case, the Employer presented no evidence that it reserved its right during the course of bargaining to file for clarification after the contract's execution. Moreover, as is noted above, the collective-bargaining agreement will not expire until June 30, 2007, so it can not be concluded that the instant petition is filed shortly before its expiration.

Accordingly, it is concluded that the Employer's unit clarification petition can not be entertained at the present time.

The Employer's cites Ziegler, Inc., 333 NLRB 949 (2001), and Williams Transportation Co., 233 NLRB 837 (1977), which provide an exception to the midterm prohibition against processing UC petitions where the matter is also being considered in a grievance arbitration procedure. Although there are grievances pending regarding two of the working foremen at the Employer, the cases cited by the Employer are inapplicable inasmuch as working foremen have been historically included in the unit, so there is no need to confirm the historical exclusion of the disputed position to prevent the enforcement of a contradictory arbitration award. Ziegler, Inc., supra.

Moreover, circumstances warranting exceptions to the timeliness considerations of the Board, such as newly established classifications, recent, substantial changes in job duties and responsibilities, and positions not clearly covered by the contract, are not present herein. Union Electric Co., 217 NLRB 666, 667 (1975); Wallace-Murray Corporation, 192 NLRB 1090 (1971). To permit clarification during the course of a contract, which clearly defines the bargaining unit, would mean that one of the parties would be able to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition. Edison Sault Electric Co., supra; San

Jose Mercury & San Jose News, 200 NLRB 105, 106 (1972);

Monongahela Power Co., 198 NLRB 1183 (1972). Accordingly,

IT IS HEREBY ORDERED that the petition filed herein be,
and it hereby is, dismissed.¹

DATED at Los Angeles, California on June 28, 2006.

/s/[James F. Small] _____
James F. Small
Acting Regional Director, Region 21
National Labor Relations Board

¹Under the provisions of Sections 102.63(b) and 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 12, 2006.